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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

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Applicant's or agent's file reference CM1871M/JH	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US99/06119	International filing date (day/month/year) 26/03/1999	Priority date (day/month/year) 30/07/1998
International Patent Classification (IPC) or national classification and IPC A61K7/06		
Applicant THE PROCTER & GAMBLE COMPANY et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.



2. This REPORT consists of a total of 6 sheets, including this cover sheet.

- ☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☒ Certain defects in the international application
- VIII ☒ Certain observations on the international application

Date of submission of the demand 07/02/2000	Date of completion of this report 21.09.2000
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized officer Hillebrecht, D Telephone No. +49 89 2399 8168 

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I. Basis of the report

1. This report has been drawn on the basis of (*substitute sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.*):

Description, pages:

1-43 as originally filed

Claims, No.:

1-17 as originally filed

2. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

3. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)):

4. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes:	Claims	2-4,6,8-10,12-17
	No:	Claims	1,5,7,11
Inventive step (IS)	Yes:	Claims	
	No:	Claims	1-17
Industrial applicability (IA)	Yes:	Claims	1-17
	No:	Claims	

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2. Citations and explanations

see separate sheet

VII. Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

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Reference is made to the following documents:

D1: WO 94 08557 A (PROCTER & GAMBLE) 28 April 1994 cited in the application

D2: EP-A-0 240 350 (PROCTER & GAMBLE) 7 October 1987

V.

1. The present application does not comply with Article 33(1) and (2) PCT since the subject-matter of claim 1 does not appear to be novel in view of the cited prior art.
2. Claim 1 claims a hair care composition comprising (a) from 0.05 to 10 wt% of a (i) non-volatile polysiloxane fluid and (ii) a spreading agent for said fluid, (b) from 10 to 50 wt% ethanol, and (c) from 30 to 89.9 wt% water, provided that the composition is not in the form of a mousse, and when the product is a spray product, the droplets produced by spraying have a minimum particle size.
3. Example 11 of D2 discloses a hair tonic composition comprising 40 wt% ethanol, 2 wt% cyclodimethicone, which is considered to represent a component according to feature (a)(i) of present claim 1, 0.05 wt% polydiphenyldimethyl siloxane (corresponding to (a)(ii)), and about 57 wt% water. Although D2 is silent on the refractive index of the silicone components, it is submitted that in the present specification cyclomethicone is considered to be a appropriate polysiloxane fluid. Moreover, even the specification is silent on the respective value for the refractive index of the compounds mentioned therein.
4. The present application does not comply with Article 33(1) and (3) PCT since the subject-matter of claims 1 and 15 does not appear to involve an inventive step.

D1 discloses hair compositions providing enhanced shine comprising a nonvolatile polysiloxane fluid having a refractive index of at least 1.46, a corresponding spreading agent, and a suitable carrier. The teaching of D1 differs from the present application that the carrier is not explicitly limited to ethanol/water and the amounts to be used for the components are open. However, in view of the first difference, D1, discloses on page 20, lines 3 and 4, that water and ethanol and mixtures thereof are preferred carriers. Moreover, The amounts of components

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used in the examples of D1 are generally within the limits set by the present claims. Especially, example VII meets all the requirements of claim 1, except that it is a hair mousse composition, which has been presently disclaimed. However, this disclaimer can merely establish novelty in view of D1. Since the applicants could not show any surprising effect based on the specific carrier composition, an inventive step could not be acknowledged. This objection applies also to the subject-matter of claim 15.

5. The features claimed in claims 5, 7, and 11 are already known from D1, the subject-matter of the remaining claims is at least obvious for those skilled in the art.

VII.1 The numbering of the claims is not consecutive, claim 10 is present twice.

2. Some of the values in the table on page 39 do not match the respective column.
3. The units mmHg, atmosphere, centistokes, dynes/cm², and inch employed on pages 6, 9, 10, 13, 30, and 38, respectively, are not additionally expressed in terms of the units stipulated by Rule 10.1/(a) and/or(b) PCT.

VIII.

1. The vague and imprecise statement in the description on page 38 (spirit of the invention) implies that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity (Article 6 PCT) when used to interpret them (see also the PCT Guidelines, III-4.3a).
2. The terms "about" and "consisting essentially of" used in claims 1 - 3 and 7 - 9, respectively, are vague and unclear and leave the reader in doubt as to the meaning of the technical features to which they refer, thereby rendering the definition of the subject-matter of said claim/s unclear (Article 6 PCT).
3. Claim 1 requires that the product when formulated as a spray product produces a spray having at least 40% of spray droplets having a particle size of at least 100 µm. However, it is submitted that this feature not only depends on the composition but certainly on features of the spray container, like nozzle diameter, nozzle form,

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pressure etc. in contrast to Article 6 PCT. See also claim 14.

4. Claims 1 to 10 are obviously directed to chemical compositions. According to claim 10', those compositions further comprise a package, a combination which appears to be rather odd. (Article 6 PCT) The claim was not redrafted as a system claim directed to a container comprising said composition.
5. The subject-matter of claims 12 and 13 do not comprise a technical feature, rather than a written instruction for use.
6. The description on page 3, line 16 is not in line with claim 1, since mousses are not excluded. (Article 6 PCT)
7. The vague term "about" when used in combination with ranges, as used in the entire description renders the scope of the claims unclear when used to interpret the claims (Article 6 PCT).